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Make extortion history

The case for development-friendly WTO accession for the world's poorest countries

Until now, the process for dealing with candidates for accession to the World Trade Organisation (WTO) has been one of extorting the maximum number of concessions out of all applicants. As a result, some of the poorest countries in the world now have more onerous WTO obligations than the richest. The 2002 WTO Decision on the Accession of Least-Developed Countries (LDCs) was intended to improve the process for these countries, but there is, as yet, no sign that it is influencing the negotiations. Vanuatu's application for membership, stalled at its own request since 2001 because of the harsh terms on offer, represents an opportunity for the WTO and its members to turn rhetoric into action. Now is the time for the WTO and its members to take steps to honour their commitment to help LDCs to join on terms that are appropriate to their level of development.

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Summary

This paper aims to make the case for a complete overhaul of the way in which Least-Developed Country (LDC)¹ applicants hoping for accession to the World Trade Organisation (WTO) are treated by the WTO itself, and by the member countries that elect to join the working party dealing with the accession application.

A new approach to LDC accession

The recommendation to adopt a fresh approach starts with the need to implement existing policy on accession. The Decision on the Accession of Least-Developed Countries that achieved consensus in the WTO's General Assembly on December 2002² is clearly intended to bring about a fundamental change in the process. It calls for a simplified, streamlined process within which WTO members exercise restraint in their demands. It expressly acknowledges that LDCs are entitled to Special and Differential Treatment³ and that they are to be given the benefit of transitional periods.

Vanuatu's level of development resembles that of its neighbour and fellow LDC, the Solomon Islands, which acceded to the WTO in 1996. If the policy embodied in the Decision on LDC Accessions is applied to Vanuatu, the resulting accession package is likely to resemble the relatively modest set of accession commitments undertaken by the Solomon Islands much more closely than the disastrous terms set out in Vanuatu's first attempt at accession.

The fact that Vanuatu participated in the preparation of the draft working party report⁴ should not prohibit a revised accession plan. Concessions extracted from LDCs through an unfair system cannot be said to be morally binding. Nor are they legally binding, by application of the principle that 'nothing is agreed until everything is agreed'.⁵ It would be contrary to the intention of the Decision on the Accession of LDCs if only those countries fortunate enough not to have attempted accession under the current process were allowed to accede on appropriate terms.

The recommendations in this paper will not succeed unless they have the support of influential members of Vanuatu's working party.⁶ The European Union (EU), as Vanuatu's largest single aid donor, and Pacific neighbours Australia and New Zealand, should equally be motivated to help make a fair accession process a reality. Both Australia and New Zealand, in particular, have a direct interest in fostering Vanuatu's development, in order to enhance the stability and security of the Pacific region.

With a queue of LDCs still waiting to join the WTO,⁷ the question of whether the 2002 Decision will now be implemented is of interest not just to Vanuatu, but also to some of the poorest or smallest countries in the world, including Ethiopia, Laos and the Pacific Island nation of Samoa.

The problems of Vanuatu's package in brief

There can be little doubt that the terms of the current accession package would be harmful to the interests of the people of Vanuatu. The major issues are briefly set out below (and explored in more detail in the main part of this paper).

Services

The services commitments in the Working Party Report 2001 are the most worrying aspect of the package. There are commitments in all ten of the current General Agreement on Trade in Services (GATS) sectors⁸ with radical liberalisation of services in education, hospitals, retail and wholesale distribution, environmental services and telecommunications.

The totality of these commitments goes well beyond that of virtually any other existing WTO member, including the richest nations. In order to benefit from commercial involvement in service delivery, Vanuatu needs first to develop a robust regulatory regime. However, the current accession package would seriously impede its ability to develop such a regime.

Acceding with the current service commitments intact would risk exposing Vanuatu to the worst kind of corporate cream-skimming in the education and hospitals sectors. It would also deprive Vanuatu of essential policy options in many critical areas of its economy.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁹

In relation to TRIPS, there is no evidence in the Working Paper Report of any concession to Vanuatu's LDC status. The Report requires Vanuatu to:

- become fully TRIPS compliant within two years of accession;
- grant immediate intellectual property rights in the form of a five-year data protection obligation, regardless of whether or not Vanuatu would otherwise be bound to recognise a patent's validity;
- establish an Intellectual Property Office and train 15 staff in TRIPS compliance;
- forego the time extension in relation to pharmaceuticals granted to founding member LDCs, which have until at least 2016 to comply with TRIPS.

None of these measures will benefit Vanuatu. They will use up funds urgently needed for Vanuatu's development priorities, while making new medicines less affordable and adding to the shortfall in the country's ability to meet the health needs of its people.

Agricultural tariffs

Like many small island developing economies, Vanuatu has no income tax and relies heavily on import tariffs. Import tariffs still represent 40 per cent of tax revenue, despite having been cut sharply in 1997, when loan conditions imposed by the Asian Development Bank required tariffs to be lowered in preparation for WTO accession.

The Working Paper Report commits Vanuatu to an average bound tariff rate¹⁰ of 43 per cent and a tariff peak¹¹ of 75 per cent. These bound rates are very low compared with the average commitments of existing LDC members (79 per cent and 130 per cent respectively). Binding at such low levels restricts Vanuatu's policy space in relation to its tax base, which is already extremely narrow. This means Vanuatu will lose the flexibility to raise its tariffs in order to achieve social aims such as protecting small farmers or encouraging agricultural diversification. Furthermore, Vanuatu's tax base is vulnerable to major shocks, such as natural disasters. Cyclones are particularly common in Vanuatu and can seriously hinder the collection of the consumer tax that was imposed in 1997 to replace lost tariff revenues.¹²

The costs of accession and membership

For most countries, accession and membership costs would be a trivial fraction of gross domestic product (GDP). This is not the case for an economy as tiny as Vanuatu. It has been unable to allocate any of its small trade budget for WTO observer fees and unpaid fees now stand at US\$200,000. This is more than the entire annual budget of the Trade Department, which is approximately US\$140,000.¹³

Once Vanuatu becomes a member its annual fees will increase. It will also face the on-going costs of WTO compliance, participation in WTO meetings and related activities. An adviser to an existing Pacific Island WTO member estimates that their country's costs could be as high as US\$1million per year.

Recommendations on the process

A new, objective process is needed for determining the appropriate level of commitments for each LDC applicant. Such a system would address the major difficulties created by the power imbalance inherent in the current system and should include the following features:

- The WTO Secretariat should provide resources to help implement the Decision on the Accession of Least-Developed Countries, and should also provide the services of impartial experts;
- The WTO should develop a fair and objective system that will enable LDC accession packages to reflect the development needs of the acceding country, rather than the demands of Working Party members;
- There should be full recognition that LDCs are entitled the full benefit of Special and Differential Treatment, all extended implementation periods and all exemptions enjoyed by founding member LDCs;
- LDCs that are in the process of acceding should be allowed to take full advantage of the new process, if necessary by retracting any 'LDC-plus'¹⁴ concessions already made in bi-lateral or multi-lateral negotiations.

Introduction

The World Trade Organisation and its members urgently need to transform the way they deal with accession applications by LDCs. Vanuatu has been chosen as a case study because it serves as a stark illustration of why change is needed if the world's poorest and most vulnerable nations are to have any chance of taking their fair share of the benefits of global trade.

It is now ten years since Vanuatu began the process of accession. Its accession has been on hold since 2001, at its own request. The reason for this request is notorious in trade circles – the final deal that came out of its membership negotiations was so onerous that it would not have been beneficial for the country to proceed.

Numerous papers have been written about the process that led to this situation.¹⁵ The excessive demands and unreasonable behaviour of several Working Party members have justifiably been criticised, although other developed country members can equally be blamed for their inaction and lack of support for Vanuatu.

Rather than focusing on which members have been the most ardent supporters of the unfair process so far, this paper takes a more constructive approach. It considers options for the future, both for Vanuatu and for other LDCs that are in the process of acceding, or that may apply for membership once the process has been made less onerous.

Context

The Republic of Vanuatu

Vanuatu is an archipelago that lies along the 'Pacific ring of fire' and its many islands owe their existence to undersea volcanic activity. With a population of just 210,000, spread through 68 inhabited islands over an area of tropical ocean the size of France and England combined,¹⁶ Vanuatu is remote from most potential trading partners and vulnerable to frequent cyclones, as well as earthquakes and tsunamis.

Until independence in 1980, Vanuatu was known as the New Hebrides and was governed jointly by the United Kingdom and France. It is now a parliamentary democracy with universal suffrage and belongs to a number of regional and international bodies, including the United Nations, various UN bodies and the association of Pacific states known as the Pacific Island Forum.¹⁷ Its people – known as the Ni-Vanuatu – are Melanesian. Bislama, an English Creole, is universally spoken alongside more than 70 local languages. English and French are the official languages.

For tourists, Vanuatu is a tropical island paradise, but its people face many development challenges. Vanuatu is a Least-Developed Country (LDC). Over 80 per cent of Ni-Vanuatu live in rural areas, where there is little access to cash, and communities depend largely on subsistence agriculture. The problems faced by rural communities¹⁸ include poor access to basic services, particularly health, education, electricity, telecommunications and drinking water. Also, poor access to capital, an inadequate transport infrastructure and geographical distance from any potential markets for goods make it difficult for people to engage in economic activity beyond a local level.

Vanuatu's Gross National Income per capita is US\$1,180.¹⁹ This figure is deceptively high – the average income of each household in rural areas is just US\$175.²⁰ Most of the country's income goes to a small urban elite, many of whom are expatriates who have settled in and around the capital, Port Vila.²¹

The Comprehensive Reform Programme (CRP)

The Asian Development Bank

WTO accession negotiations are often conducted against the background of a structural adjustment programme imposed by an international finance institution, and Vanuatu is no exception.²² Its drive towards accession from 1997 onwards was at the behest of the Asian Development Bank (ADB),²³ which rolled out in Vanuatu its most rapid and wide-ranging set of reforms seen anywhere in the Pacific, at the time or since.

The ADB considered Vanuatu's accession to the WTO to be highly desirable. The ADB justified many of its reforms by reference to the need to ensure Vanuatu's trade and investment regime conformed to likely demands as part of its accession negotiations. As a result, Vanuatu had already paid for many of the WTO accession costs before its negotiations were even properly underway.

Most of the reforms were designed to ensure that Vanuatu significantly 'outperformed' comparable LDCs that were already WTO members. This was seen as necessary and appropriate before Vanuatu could make a realistic offer to accede to the WTO. This is a stark illustration of why the recommended reforms to the accession process are desperately needed. LDC candidates should not have to pay upfront what amounts to a large, non-refundable deposit for entering the negotiating arena.

The ADB began its involvement in Vanuatu during the mid 1990s, when the government of Vanuatu was facing a number of economic, political, and governance challenges. These included a chronic trade deficit, stagnant gross domestic produce (GDP), politicisation of the civil service and investment decisions, credible charges of misconduct against politicians, and frequent votes of no confidence in the government.²⁴ Seeking a solution to these problems, the government turned to the ADB for help.

Key requirements of the CRP

The ADB designed the Comprehensive Reform Programme (the CRP), which agreed a loan to Vanuatu of US\$20m,²⁵ on condition that Vanuatu implement a set of radical changes to its economy and regulatory regime. The CRP became operational in mid-1997.²⁶

The CRP's main requirements were:

- major changes to the tax structure, including replacing the majority of import tariff revenue with a VAT of 12.5 per cent;
- downsizing of the civil service by 10–15 per cent;

- radical alterations to the country's legislative framework;
- the sale of various state-owned commercial assets.

The ADB's rationale was that these measures would:

- raise government revenue and balance the budget by 2000;
- improve the efficiency and transparency of the civil service;
- encourage private-sector led growth, including small businesses and the rural sector.

The ADB did not collect any poverty statistics or conduct any poverty impact analysis before the CRP was introduced, nor has it done so in the eight years since.²⁷ However, it did belatedly conduct a survey in 2003 to research the priorities of the people living in rural hardship.²⁸

The CRP has now been in operation for eight years. There is general consensus in Vanuatu that the CRP has largely failed in its objectives.²⁹ Warning signs were apparent shortly after the CRP was implemented: GDP immediately began to shrink, exports plummeted and foreign investment declined (and has remained largely stagnant since³⁰).

The CRP has not resulted in any discernable benefits to the private sector, which remains stagnant. Government revenue declined sharply (and has only just recovered), in part due to the loss of tariff revenue, which was not fully replaced by VAT.³¹ Another major source of revenue loss has been the sell-off of profitable assets. Among these was the Department of Civil Aviation. This sell-off had already been mandated before the CRP started, but the reform programme was the driver behind implementation. The sale went ahead despite strong warnings from government officials that it would severely reduce government revenue.³²

Reforms under the CRP have failed to provide tangible economic benefits for Vanuatu's population. In urban areas, unemployment rates, which were very low, have risen significantly. Peri-urban slums are on the increase, as people migrate to avoid the hardships of rural areas, and search for a place in the cash economy, but cannot find work in the stagnant business environment.³³

Far from promoting private enterprise in rural areas, the CRP cut off all access to credit for people in rural areas by forcing the closure of the Development Bank of Vanuatu, which had been the only real source of small loans for rural entrepreneurs.³⁴

Downsizing of the civil service

The rationale for the blanket requirement to downsize the civil service is difficult to follow, since Vanuatu's civil service was relatively small to begin with.³⁵ The downsizing caused major problems, since retrenched staff tended to be either highly-skilled people with other employment options, or staff providing essential service-delivery in rural areas, such as primary teachers, who could not be in the capital, Port Vila, to lobby for their jobs.

The initial dip in the public-service wage bill quickly disappeared, as more expensive, less experienced short-term contractors were hired to fill the gaps in the workforce. The timing of the loss of valuable expertise was disastrous for the government's revenue collecting, as it coincided with major changes to the tax system.

Eight years on, the civil service is more transparent than before the reforms,³⁶ but the cost of achieving this relatively modest benefit has been very high.

The CRP has also been detrimental to the rural and urban poor. Service delivery in rural areas has never recovered from the downsizing exercise. This is probably due, in part, to the drop in government revenue, making it more difficult for the government to afford the cost of services in remote areas.

The introduction of VAT

The price of basic commodities rose sharply in rural areas after VAT was introduced. In theory, prices should have dropped, because the VAT was lower than the previous import tariff in most cases. However, this relatively sophisticated tax was introduced to a population with a literacy rate of 33.5 per cent,³⁷ with little lead-in time and without a programme of education, resulting in a poor understanding of the way VAT works, particularly in rural communities. This allowed widespread abuse of the system by unscrupulous traders, who simply added 12.5 per cent to the previous retail prices, blaming VAT for the need to do so, while at the same time failing to account to the tax department for the collection.³⁸

A significant debt

The final major problem created by the CRP concerns the re-payment obligation of US\$20m, meaning Vanuatu now has a significant debt-servicing problem.³⁹

The history of Vanuatu's accession process

Vanuatu began the process of seeking accession to the WTO in 1995, narrowly missing the deadline for gaining automatic membership.⁴⁰ However, it was not until 1997 that it focused on the accession process, at the behest of the ADB under the CRP. The ADB was keen to ensure that Vanuatu made whatever changes might be necessary to put it in a strong position to make an acceptable offer to the WTO. The CRP contained many requirements aimed at achieving this.

As an LDC and a Small Island Developing State (SIDS)⁴¹ with a tiny economy, Vanuatu does not have any major trading partners, let alone any of the world's major economies. So when it presented its initial offer to the WTO in time for the Seattle Ministerial Conference in 1999, Vanuatu expected that its offer might simply be accepted as it stood and membership granted. However, the Working Party considered the offer unacceptable, despite the fact that Vanuatu's proposed commitments extended well beyond those of existing LDC members. Vanuatu was sent back to the drawing board.

As it set about improving its offer, Vanuatu came under strong pressure from the Working Party to make deeper liberalisation commitments on goods and services, as well as undertake major commitments in relation to its intellectual property regime. The rationale for this pressure appears to relate less to the attractiveness of Vanuatu's small market, and more to the 'ratchet' process, whereby an accession package by one country (especially an LDC) can be used as a minimum threshold in subsequent accession negotiations. With limited resources and little home-grown expertise on some of the more technical aspects of the process, Vanuatu was obliged to rely heavily on external advisors in order to put together a more acceptable package for presentation at the Doha Ministerial Conference in 2001.

The draft Working Party report that resulted contained many commitments that went well beyond what even the richest WTO members had agreed to, especially in sensitive sectors like essential services such as health care and education. At the last minute – literally days before the Doha Ministerial Conference – Vanuatu realised the implications of some of the proposed commitments, and requested a delay in the process. Its accession has been on hold ever since.

The main problems with the current accession package

Services

The services schedule to the draft Working Party Report is the area of most concern in Vanuatu's accession package. Before considering the details of the schedule, it is worth noting the context in which it sits. Trade in services is covered by one of the groups of agreements that bind WTO members: the General Agreement on Trade in Services (GATS).

GATS expressly recognises the need of developing countries in general, and LDCs in particular, to make fewer commitments. The relevant Special and Differential Treatment provisions of GATS include:⁴²

Article XIX:

2. The process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

Article IV:

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

It is well documented⁴³ that Working Party members have been disregarding these provisions and systematically demanding from acceding countries WTO-plus⁴⁴ commitments in the services sector. In fact, poorer countries have typically been asked to give more than

rich countries.⁴⁵ In Vanuatu's case, this practice was taken to the extreme.

A raft of commitments

Vanuatu has made commitments in all ten of the eleven broad sectors under GATS,⁴⁶ with commitments in 74 sub-sectors. By contrast, its neighbour and fellow LDC the Solomon Islands has commitments in four sectors and six sub-sectors, and Fiji, which is a much more advanced developing country in the Pacific, has commitments in only one sub-sector.

The developed country nearest to Vanuatu is New Zealand, which has no commitments at all in one important sector – health – and only limited commitments in the education sector. Overall, it has a slightly higher number of total sub-sector commitments than Vanuatu (80), but many of these are in sub-sectors where there is little public or business sensitivity, such as computer consultancy or ancillary business services. There are also many exceptions attached to the more sensitive sectors, such as health care, education and audio-visual services, imposed by New Zealand in order to retain its flexibility to achieve social, cultural and economic aims.⁴⁷

The figures give an indication of the enormous breadth of Vanuatu's liberalisation commitments, but a closer look at the detail reveals an even more dramatic picture. Vanuatu's services schedule calls for an almost total liberalisation of services in the education, hospital, telecommunications, wholesale, retail, environment and financial sectors. Not one existing WTO member – let alone an LDC member – has made such sweeping commitments across the most sensitive sectors.

Does Vanuatu need GATS?

GATS is not expressly an investment agreement, but many of its most fundamental provisions relate to the conditions under which foreign capital can enter a country's services sector. There is little dispute that foreign direct investment (FDI) has the potential to contribute to sustainable development, if invested in the right way. However, the idea that FDI is always beneficial to the country involved is much more dubious, as the United Nations Conference on Trade and Development (UNCTAD) has noted: 'Not all FDI is in the best interests of host countries. Some can have an adverse effect on development.'⁴⁸

It is important to consider that, even without any GATS commitments, there is nothing to prevent a country inviting the kind of investment that will help it to achieve its development goals. And without GATS provisions that constrain the ability of governments to regulate in certain ways, the host country can set the regulatory framework to protect and enhance its environmental, social and development needs. It is often asserted that foreign companies will only invest in a country if they know that their interests are protected by commitments such as those imposed under GATS. This is again refuted by many, including UNCTAD: 'There is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS.'⁴⁹

Education

Like many Pacific Island countries, Vanuatu has insufficient resources to fully fund primary education for all. This is despite the fact that Vanuatu spends approximately 28 per cent of its annual budget on primary and secondary education⁵⁰ and also receives substantial education-related development assistance.⁵¹

School fees of around 5,000 Vatu (approximately US\$45) per child per year are typically imposed to make up the shortfall. This is a considerable sum for families in rural areas, who have limited means to generate the cash to pay these fees. The average annual income of rural families is estimated at 19,300 Vatu (approximately US\$175).⁵²

The majority of children cannot continue on to secondary school after primary school, as there are simply no places available for them in the secondary system. Rural children are particularly badly affected – only 29 per cent go on to secondary school, as compared with 77 per cent of urban children.⁵³ Even at primary level, rural children are poorly served. Over 100 rural schools are classed as remote and lack access to the most basic services.⁵⁴ Of further concern is the cutback in rural services caused by the CRP, which led to the loss of many teachers in remote areas.⁵⁵

It is against this background that Vanuatu's commitments in the education services sector need to be considered. Most countries justifiably regard publicly funded education as a matter of vital importance that needs to be protected from commercialisation. It is, therefore, not surprising that not one of the member countries of Vanuatu's Working Party has undertaken any liberalisation commitments in relation to public primary and secondary education.

European Union member states do have some existing commitments in the education sector, but these are expressly confined to privately funded education institutions. The new offer recently placed on the table at WTO negotiations by the EU does not include any liberalisation commitments in public education.⁵⁶ Both New Zealand and the US have no existing commitments, nor do they offer any new liberalisation commitments in public primary or secondary education.⁵⁷

Vanuatu, by contrast, is obliged to allow unlimited access to foreign service providers at all levels of its education system. Worse still, it must grant full national treatment to foreign providers.⁵⁸ This means that foreign providers can not only select the best commercial opportunities from the education system, but can also apply for government funding to do so.

Acceding to the WTO with this obligation intact would expose Vanuatu to the likelihood that foreign education service providers would set up schools to cater for the children of expatriates and the small local elite. Such elite schools would inevitably drain the best teachers away from the rest of the education system. They would also deprive the Vanuatu government of the option of charging the wealthy for school fees to subsidise an increased capacity to deliver basic education.

GATS places severe restrictions on a government's ability to regulate foreign providers in a sector where national treatment has been accorded. The principle prohibiting '*de facto* discrimination' (Article 17.3 of GATS), for example, means that the government is open to being challenged by the WTO if it implements an ostensibly non-discriminatory policy that a foreign provider finds more difficult to fulfil than a local provider.⁵⁹

Furthermore, GATS not only prohibits regulations that may discriminate against foreign companies, its provisions also preclude any regulations that constitute an 'unnecessary barrier to trade'.⁶⁰ This means that regulation to achieve social aims, such as access to education for all children, may be undermined if the regulatory mechanism is deemed to be unnecessary or excessively burdensome.

The phrase 'Unnecessary barrier to trade' is not defined in the GATS agreement. It is a vague term; therefore a body of case law will need to emerge from disputes in a variety of contexts before its implications in any given situation can be predicted with any certainty. Such predictability is likely to be several years away, which means that many governments will hesitate to regulate for fear of costly challenges at the WTO.⁶¹

These restrictions on Vanuatu's freedom to regulate are likely to cause problems in achieving the country's desired social aims. For example, it would struggle to regulate that the curriculum be designed to foster the linguistic and cultural heritage of the country. The children of the elite would then receive an internationally designed education that not only deprives them of their heritage, but also alienates them from their less-privileged fellow citizens. The long-term consequences for social cohesion of driving such a wedge between these two groups could potentially be serious.

The interest of foreign providers in education service delivery is more than theoretical – in 1998/1999, health and education-related applications to the Vanuatu Foreign Investment Board amounted to approximately US\$1.5m.⁶²

Telecommunications

A company called Telecom Vanuatu Limited (TVL) provides Vanuatu's telephone services. The government of Vanuatu, Cable & Wireless, and France Cable and Radio owns this company in equal shares. It has a licence granting it an indefinite monopoly, which can be terminated at six months' notice in 2012, or at any three-year interval after that. However, if the monopoly is terminated, the government must buy all TVL's assets at market value.

This requirement will make it very difficult for the government to be in a position to terminate the licence even after 2012. However, it is possible that a buyer might be willing to take over the government's obligation to buy TVL's assets, in return for a sufficiently profitable contract. The opportunity for Vanuatu to secure a significantly better deal for itself in these circumstances is limited. However, even with the existing contract in place, there is some scope for regulation, monitoring and policy development to mitigate some of the problems in the sector.

An issue of immediate concern in Vanuatu is telephone coverage in rural areas. This is unusually poor – there are 14,000 mobile or fixed-line phones in the country, but most of these are in the two urban areas, Port Vila and Luganville. Many villagers in remote areas have no access to any phone service, and have identified this as a key priority.⁶³

A major external review in 2004 produced a report that noted problems with unexpectedly low coverage levels for rural areas and commented that (in respect of mobile coverage for rural areas):

TVL sets its own performance targets and indicators and some of these do not appear to be as rigorous as those of other developing countries. Moreover it is not clear in some cases whether its own targets have been met.⁶⁴

The report also documents that the government tried to improve rural service in 2000 by borrowing approximately US\$3.6m and then lending it to TVL at a low interest rate, to enhance rural phone services. As of 2004, no information was available on how many additional rural lines were brought into service as a result of the initiative, nor was there any information on TVL's current rural expansion targets.⁶⁵

The same report commented on the importance of rural telephone service coverage:

Rural service is vitally important in Vanuatu where the majority of the population is dispersed in often isolated locations far from the two urban centres. Moreover the low

income levels of rural dwellers make affordability a major issue.⁶⁶

The report recommends setting appropriate 'universal service' targets, such as ensuring there is a payphone within an hour's walking distance and ensuring that there is a payphone in communities above a certain size.⁶⁷ The report identifies cross-subsidisation⁶⁸ as the only feasible option for funding this.⁶⁹ It recommends that a regulatory body be set up, whose remit would include setting up a policy on the extension of services to rural areas.⁷⁰

It is widely recognised that the regulation of the telecommunications sector to provide some kind of universal coverage is extremely important to a nation's interests. The right to do so is expressly recognised within GATS – the aspect of GATS which deals with telecommunications includes a 'reference paper'⁷¹ on telecommunications which contains the following provision:

Universal Service: any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

While it might seem that this provision would allow a country to regulate for universal service, this is by no means assured. In April 2004, the United States won a ruling from the WTO Disputes Panel against Mexico for attempting to use this provision to regulate for cross-subsidisation.⁷²

As with the phrase 'unnecessary barrier to trade', no definition is given for 'not more burdensome than necessary'. However, this Disputes Panel ruling suggests that it could be interpreted to severely restrict any regulation that attempts to benefit disadvantaged consumers. This would be consistent with the contents of the discussion in the WTO Working Party on Domestic Regulation,⁷³ which suggested that the relevant measure of 'burdensome' to be considered is the cost falling on the foreign corporation, not the burden on poor consumers.

Under the terms of the Working Party Report, Vanuatu is committed to full liberalisation of telephone and email services after 2012, including full national treatment for foreign companies. In making this commitment, Vanuatu has probably relinquished its power to regulate for cross-subsidisation, even though that is very likely to be

the sole means available for the country to provide urgently needed telephone services to rural areas.

Vanuatu's situation contrasts starkly with the process set up by New Zealand to protect its national interest in such a key service. Before the New Zealand government sold off a portion of Telecom New Zealand (the main telecommunications supplier), it agreed a comprehensive contract of sale, which imposed what it describes as 'social obligations' on the newly privatised monopoly.⁷⁴ These obligations ensure that rural service delivery is maintained (with installation charges capped, regardless of actual cost), local calls remain free for residential customers, and basic phone charges remain reasonable by being linked to inflation. The New Zealand government has also limited the shareholding in Telecom of any single overseas entity to less than 50 per cent and requires that half of the Board members are New Zealand citizens.

Distribution services

The current accession package allows foreign providers full access to the wholesale and retail markets for food and other basic goods. It is already very difficult for Ni-Vanuatu people to become retailers and the accession package can only make it more difficult. It also leaves Vanuatu open to short-term exploitation by foreign businesses with no long-term commitment to the country and no interest in the well-being of the communities they service. The sector needs to remain unbound by GATS provisions in order to afford Vanuatu the option to regulate market entry or conditions in the future – such as a requirement for coverage of rural areas, or to form business partnerships with Ni-Vanuatu people.

One strike and you're out

One of the concerns often voiced about GATS commitments is that they do not allow a country's regulations to evolve as the government learns what does and does not enhance a nation's development. One such example is the retail sector in Thailand. Thailand has no GATS commitments in retail, but unilateral liberalisation since the late 1980s has attracted investment from major European retail chains. The expanding presence of large foreign retailers is highly controversial, as it has adversely affected local employment and small traditional shops.

In response to these domestic concerns, the government developed new regulations aimed at curbing the expansion of foreign retail giants. However, the regulations were not implemented because it was clear that slowing down this excessive unilateral liberalisation would be unacceptable to Thailand's trading partners. The government is considering other ways to solve the problem, using town-planning laws. There is a great deal of concern that this second-best solution will be ineffective. If Thailand had GATS commitments in this sector, as the EU is requesting, the government's ability to respond to its electorate and regulate the sector would be even further restricted.⁷⁵

Hospitals

Vanuatu's health-care system is severely hampered by a lack of resources, combined with the inherent difficulties created by the geographical spread of its population. There is only one doctor for every 10,000 people, so most services are provided by midwives and nurses. Twenty percent of the population has no access to medical services at all.⁷⁶

As with education, the complete liberalisation of hospital services would enable foreign providers to cream off the potentially profitable sections of the market and obtain government funding for their operations, which would drain resources from government-operated facilities. Subsequent disinvestment could also lead to gaps in this vital sector. Vanuatu has experienced similar 'here-today-gone-tomorrow' operators in this sector in the past.⁷⁷

By granting national treatment for hospital services, the government has effectively forfeited many of its rights to regulate the sector in the public interest. This is even more clearly the case for hospitals than for telecommunications, since there is no explicit 'universal service' exception to the rule that there be no 'unnecessary barriers to trade' or *de facto* discrimination.

Mechanisms such as risk-pooling and cross-subsidisation are often used in developed and developing countries to ensure that basic services can be provided to the poor. Regulations that ensure that foreign providers contribute to such socially beneficial schemes may be challenged under the GATS obligations in Vanuatu's accession schedule. In fact, any regulation can be challenged on the basis that it is an 'unnecessary barrier to trade' or 'more burdensome than necessary'. This could, effectively, leave a WTO tribunal in Geneva to decide what the Vanuatu health authorities can and cannot do as they try to use regulations to enhance their ability to meet their health policy aims.

Environmental services (sewerage and refuse)

The current accession package for Vanuatu imposes no restrictions on foreign entry and gives full national treatment to foreign providers. Only urban areas in Vanuatu have sewerage and refuse services. This small 'market' is a natural monopoly, with room for only one supplier, which is currently the government. Any foreign supplier competing to replace the government would have a profit motive. Therefore it is likely that a public monopoly would be replaced by a private monopoly, with little prospect of a sound regulatory regime to ensure an appropriate level and quality of service.

In the past, WTO accession negotiations have served as a back-door means to open up essential service sectors in LDCs to foreign investors. This is a further compelling reason for the recommendations in this paper to be implemented. Water services, as a basic human need, are even more sensitive than sanitation. It is at least partly for this reason that they are not currently included in GATS. However, the EU is working hard to change this state of affairs through attempting to have a new definition for water supply included in GATS. This would mean that acceding LDCs are likely to face pressure to liberalise water services along with sanitation.⁷⁸

The series of disastrous failures of water privatisation schemes imposed by the World Bank or the International Monetary Fund (or their regional equivalents) under loan conditions provides strong evidence that privatisation of such essential services is far from the economic panacea that it is sometimes claimed to be. The recent failure of water privatisation in Tanzania is one example of this.⁷⁹ Locking in a commitment to allow privatisation of such essential services is unlikely to be a wise policy choice for any developing country.

The dangers of making GATS commitments in water and sanitation are exacerbated in cases such as Vanuatu, where it is clear from the current situation in the water, electricity and telecommunications sectors⁸⁰ that the country lacks an adequate regulatory and enforcement structure. Without having this structure in place, Vanuatu will struggle to ensure that private-sector involvement benefits consumers, especially the poor, nor can it protect the rights of vulnerable groups to essential services.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The Working Party report section on TRIPS requires Vanuatu to undertake extensive TRIPS obligations on a very tight timescale. Before accession, Vanuatu will have to pass TRIPS-consistent legislation, with implementing regulations to be passed within one year of accession. Vanuatu has two years to complete full implementation of all TRIPS-related obligations. This contrasts with existing LDC members, which have until at least 2016 (21 years from the signing of the agreement) to implement their objectives, and recently acceded LDC members Cambodia and Nepal, which were given four years.

Among the obligations listed in the Working Party Report, Vanuatu must train 15 personnel in TRIPS issues and establish an Intellectual

Property office within 18 months of accession. This obligation will be expensive and difficult to fulfil. It is extremely unlikely that Vanuatu will reap any practical benefits from meeting these requirements – they will only benefit multinational corporations with intellectual property interests to protect.

To put this obligation into perspective, the Vanuatu Trade Department has only five staff, who are responsible for the negotiation and administration of the five different trade agreements that Vanuatu has signed, is currently negotiating or is about to negotiate.⁸¹ The department is so under-resourced that there have been long periods of time when it could not afford Internet access for its staff.

The TRIPS double standard

Unlike most WTO agreements, TRIPS is not a measure to liberalise trade. It is a means to restrict the use of new medicines and other technologies to those who can afford to pay a premium to the patent-holder, over and above the cost of manufacture. Its application to medicines, for example, results in a massive transfer of wealth from poor countries to wealthy multinationals. An article entitled 'How to Help Poor Countries', published in *Foreign Affairs* in July 2005, included the following commentary on TRIPS:

'An international community that presides over TRIPS and similar agreements forfeits any claim to being development-friendly. This must change: the rich countries cannot just amend TRIPS; they must abolish it altogether. A simple comparison makes the point clear: major industrial countries such as Italy, Japan and Switzerland adopted pharmaceutical patent protection when their per-capita income was about \$20,000; developing countries will adopt it at income levels of \$500 per capita, in the case of the poorest, and \$2000–\$4,000 for middle-income countries. By these standards, forcing developing countries to abide by TRIPS is about 50-100 years premature.'⁸²

While Vanuatu might receive aid grants to help it fulfil its TRIPS obligations, it is likely that these grants will come out of the total aid package available to Vanuatu, thus diverting funds from the country's development priorities.⁸³

A particularly worrying aspect of the TRIPS obligation is that Vanuatu is being asked to forego the benefit of the pharmaceuticals exception to TRIPS enjoyed by all existing LDC members, and included in Nepal's recently concluded accession package.⁸⁴

Vanuatu's accession package also requires it to grant a five-year period of data protection for pharmaceuticals and agricultural products.⁸⁵

This commitment effectively gives a five-year exclusive license to patent-holders, regardless of whether or not Vanuatu would otherwise be bound by their patent. This is a significant restriction on

Vanuatu's rights, since its TRIPS obligation to recognise patent rights does not apply retrospectively.

When taken together, these obligations significantly restrict Vanuatu's ability to import many of the cheaper generic forms of new drugs. Diseases for which new drugs are likely to be useful, such as acute respiratory infections, are of major concern for Vanuatu.⁸⁶ Health officials also believe that it is only a matter of time before HIV/AIDS becomes a more serious health issue.⁸⁷ Health-care costs – including the price of drugs – already place a major financial burden on families,⁸⁸ and the government spends almost 13 per cent of its budget on providing a health service that remains woefully inadequate.⁸⁹

Cambodia was forced to sign up to a similarly onerous commitment in order to finalise its package for presentation to the Cancun Ministerial Conference in 2003. The fact that Cambodia could not negotiate LDC treatment in relation to pharmaceuticals was regarded as so scandalous that the WTO Secretariat took the unusual step of announcing at the Ministerial Conference that Cambodia would be allowed to use the LDC exception after all.

Agricultural tariffs

In 1996, approximately two-thirds of Vanuatu's total tax revenue came from import tariffs, which peaked at 207 per cent.⁹⁰ In addition, business licenses and service taxes were collected as surcharges on import duty, which effectively raised import tariffs.⁹¹

These charges on imports were targeted for reduction under the CRP as the Asian Development Bank (ADB) believed that without this 'no credible goods offer'⁹² was possible in the accession negotiations. Effectively, therefore, the ADB's changes to the tax system, which proved so harmful to the poor, were driven by a perceived need to anticipate demands for tariff reductions from Working Party members.

This perception proved correct. Even though Vanuatu's original offer on its average bound tariff was very low for an LDC at 49 per cent, it came under great pressure from Working Party members to lower this average to 15-25 per cent. Vanuatu could not comply with this demand, as it would have removed all remaining flexibility from what was now a very narrow tax base.⁹³ This would expose the country to a potential revenue crisis in the event of a significant natural disaster, such as a severe cyclone, which would make VAT collection impossible.⁹⁴ However, Vanuatu did improve its offer, and

the average bound tariff that appears in the working-party report is 43 per cent, with the tariff peak bound at 75 per cent.

It is helpful to view Vanuatu's commitments on agricultural tariffs in context. Vanuatu's neighbouring LDC, the Solomon Islands, has commitments of 70.7 per cent (average) and 150 per cent (peak). The commitments of the 30 founding LDC members average out at 79 per cent (average) and 130 per cent (peak). Even Nepal, which became the first LDC to accede following the ratification of its protocol of accession at the 2003 Cancun Ministerial Conference, has a much higher peak rate of 200 per cent and a bound average of 44 per cent. The United States has a tariff peak well in excess of any of these examples, at 350 per cent.⁹⁵

Although not an LDC, the small Pacific Island developing country of Tonga is also seeking accession to the WTO and has also had to cut import tariffs sharply in order to progress towards membership, despite the fact that it is heavily reliant on tariffs for tax revenue. Tonga has announced plans to reduce all tariffs to a flat rate of 15 per cent and hopes to be able to replace at least some of the income by introducing a value-added tax.⁹⁶

Costs

If Vanuatu were to accede to the WTO on the terms currently offered, the cost to its development prospects would probably be significant, albeit difficult to quantify. In addition to these costs, there are at least four categories of direct financial costs associated with WTO accession:

- annual membership fees;
- expenses relating to representation at the WTO in Geneva and at meetings elsewhere, as well as managing the large volume of paperwork involved;
- the cost of implementing reforms required for Vanuatu to comply with its new obligations;
- the ongoing cost of ensuring compliance.

Vanuatu currently owes approximately US\$200,000 in back fees for its observer status, which is more than its Trade Department's total annual budget. It does not currently have the means to pay these back fees, which will presumably have to be paid out of the country's available aid package.

As a WTO member, Vanuatu's annual fees will increase to approximately US\$27,000 per year. The costs associated with being a

member of the WTO are difficult to quantify in advance, but one Pacific advisor put the figure for his country at approximately US\$1 million per year.⁹⁷ This figure is almost seven times the total budget of the Trade Department in Vanuatu.⁹⁸

The cost of bringing Vanuatu into compliance and maintaining compliance is also likely to be prohibitive. A World Bank paper commented of some of the Uruguay Round agreements for LDCs:

Implementing such reforms...will cost money, and the amounts of money involved are substantial. Based on bank project experience in the areas covered by the agreements, an entire year's development budget is at stake in many of the LDCs.⁹⁹

The above quotation refers only to sanitary and phytosanitary (SPS), intellectual property and customs aspects of the agreements – and not the costs of implementing the full range of WTO reforms. The paper also concluded that LDCs would receive little tangible benefit from the outlay.

Reform may often be needed in areas that are covered by the WTO, including customs, intellectual property and sanitary and phytosanitary (SPS) regimes. However, the nature and extent of reform needed to benefit a country will not necessarily correlate with the obligations required of WTO members, let alone the additional obligations required of acceding countries. One recent World Bank study shows the degree to which WTO provisions reflect the interests of the richer members, creating problems for developing countries, particularly LDCs.¹⁰⁰ The abstract of the paper notes:

Least developed country institutions in these areas [regulations establishing the basic business environment of the domestic economy] are weak, and would benefit from strengthening and reform. However, our analysis indicates that the WTO obligations reflect little awareness of development problems and little appreciation for the capacities of LDCs to carry out the functions that SPS, customs valuation, intellectual property, etc regulations address. The content of these obligations can be characterised as the advanced countries saying to the others, Do it my way!

Potential benefits of accession on appropriate terms

Many LDCs may feel compelled to join the WTO on whatever terms they are offered, in order to preserve or create markets for their vitally important large-volume export industries. However, Vanuatu's exports are mostly either tropical commodities (e.g., copra and cocoa) or niche market products for which ready markets are available (e.g. jungle-grown coffee and high-quality, organic beef). Therefore Vanuatu has no immediate commercial motivation for joining the WTO.

However, in an increasingly integrated global economy, most countries are keen to have a seat at the table of what might be viewed by some as the world's economic parliament. There are potentially some tangible membership benefits. In theory, membership gives access to the Disputes Settlement Mechanism,¹⁰¹ although in fact no LDC has ever used this mechanism. Also, being part of the LDC group during negotiations would give Vanuatu the potential to influence decisions that affect its interests.

Some Vanuatu government officials interviewed as part of research for this paper also identified the external imposition of policy stability as a potential benefit of accession. While Vanuatu has often experienced capricious political decision-making, great caution should be shown before concluding that the policies imposed by WTO accession provide the best solution to such governance concerns. It is important to remember that a prime motivator for allowing the Asian Development Bank to impose what proved to be very damaging loan conditions on Vanuatu was the government's desire to overcome similar problems ten years ago. Most Ni-Vanuatu would agree that the cure in that case was worse than the disease.

A new package that fully honours the 2002 Decision on the Accession of Least-Developed Countries would ensure that Vanuatu's commitments are no more onerous than those that apply to comparable LDC members. Such a package could well be widely acceptable within Vanuatu. However, that assessment can only be made by consulting the needs and wishes of the people who will be affected, namely the citizens of Vanuatu themselves. Such consultation would need to be accompanied by an objective assessment of the likely costs and benefits of accession.

The original negotiating process for Vanuatu's accession was largely driven by international agencies and consultants. This meant that no

effective consultation with the people of Vanuatu took place before the original accession package was put together. That failure should not be repeated if the accession process restarts. This is particularly important for the people of Vanuatu, who are still experiencing the negative effects of the last radical external intervention in their economy, when ADB imposed detrimental loan conditions from 1997 onwards.

Recommendations

Support from influential Working Party members

The recommendations set out in this paper will not succeed unless they have the support of influential members of the Working Party.¹⁰² The European Union is one obvious candidate for this role, given its influential position within the WTO and its status as Vanuatu's largest single aid donor, when aid from France and the UK is taken into account alongside direct EU contributions.¹⁰³

A further consideration is that four of the eight G8 countries are EU members. The Communiqué from the July 2005 meeting of the G8 Finance Ministers expressly acknowledges the importance of accommodating the needs of developing countries in the international trade arena. These comments apply all the more strongly to LDCs:

However, not all countries will benefit in the short term from reductions in trade barriers. Some countries lack the capacity to produce and deliver goods to international markets competitively; for others, the transitional costs of moving to more open markets may be substantial. We also recognise that poor countries face particular problems and need the flexibility to decide, plan and sequence reforms to their trade policies to fit with country-owned development programmes. We commit to provide support to enable developing countries to benefit from trade opportunities.¹⁰⁴

Neighbouring developed countries such as Australia and New Zealand should be equally motivated to help support Vanuatu. New Zealand is a significant aid donor and an active development partner working with Vanuatu to achieve positive development outcomes, particularly in education. It is also a Pacific country with a direct interest in fostering Vanuatu's development, in order to enhance the stability and security of the Pacific region.

New Zealand has undergone a significant shift in its policy on trade and development since it participated in the creation of Vanuatu's Working Party Report. It now favours an approach that recognises the importance of ensuring that trade policy and practice serve development needs, rather than hindering them.¹⁰⁵

Providing resources

The Decision on the Accession of LDCs provides that:

- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDCs' Accession Working Parties in implementing this decision.
- Upon request, WTO Members may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.¹⁰⁶

Implementing these provisions would mean that the WTO would be obliged to provide the resources necessary to develop a fair process for LDC accession, as set out in the recommendations that follow. For example, it could fund the provision of impartial expert advice to enable the development of fair benchmarks for LDC commitments.

Correcting the power imbalance

The current system means that under-resourced LDC trade negotiators have to defend their countries' needs against the most experienced and talented trade diplomats in the world. The negotiators from rich countries hold all the trump cards, since there is little or nothing an LDC can do if any one of the more powerful Working Party members wishes to make take-it-or-leave-it demands.

The current system inevitably produces unfair results. Instead of this system, a process should be developed that enables a fair and objective application of the policy set out in the Decision on the Accession of LDCs and all other relevant decisions relating to Developing and Least-Developed Countries. The process should be designed so that an accession package genuinely reflects the development needs of the LDC and its right to use trade as a tool to support its path to development.

One important feature of such a system would be the creation of benchmarks for each aspect of the accession package, based on objective development indicators for the applicant LDC, and where those indicators place the applicant in relation to existing member LDCs.

In Vanuatu's case, appropriate commitments in the services sector should be similar to those undertaken by an LDC with a similarly weak regulatory capacity. In agriculture, the appropriate bound level of tariffs should be assessed by comparison with other LDCs that also rely on tariffs as a major source of government revenue.

An objective system of this kind would overcome the problem created by the current system, where LDCs are typically denied Special and Differential Treatment unless they can prove that they have a real need for it. The current rationale is that there is no reason why acceding LDCs should benefit from concessions they might not need. In practice, however, Vanuatu's situation shows how this burden of proof on LDCs has led to them having to take on commitments well beyond what is fair or appropriate.

It will often be impossible for an LDC applicant to prove its case for leniency. Apart from the intimidating effect of the power dynamic involved in the negotiations, an LDC is likely to lack the technical capacity to put forward available arguments, or may have no means of predicting the future consequences of narrowing policy options.

This is particularly true where an LDC is asked to surrender options that other countries have used during their economic development process. For example, New Zealand used high tariff barriers and farm subsidy schemes very successfully to develop its farm sector to a point where it could compete internationally. The EU and the US maintain such systems of subsidies and protection even today and defend them vigorously, both at the WTO negotiating table and by engaging in 'creative accounting' to conceal continued subsidies.¹⁰⁷

Allowing all LDCs to benefit

Apart from Vanuatu, seven other LDCs are at various stages in their accession negotiations.¹⁰⁸ Samoa's process is particularly well advanced in that it has produced and presented a draft Working Party report. Others have already submitted memoranda on their foreign trade regimes, which may well reflect WTO-plus commitments similar to those that Vanuatu was encouraged to include in its initial offer.

Vanuatu and all other acceding LDCs should not miss out on the benefits of any new system designed to correct previous unfairness, simply because they have been forced to make inappropriate concessions in the negotiations to date.

It may be argued by some that it is too late for Vanuatu to back away from the terms of its Working Party Report, since these terms came out of negotiations in which it participated. However, it would be unfair to regard the 'consent' that Vanuatu gave under duress during those negotiations as morally binding.

Nor is this consent legally binding in WTO terms. The principle that 'nothing is agreed until everything is agreed' applies in the negotiations in each WTO round.¹⁰⁹ The fact that Vanuatu did stop

short of signing on the dotted line means that this principle ought to apply, particularly since a request to re-open accession negotiations is not covered by any binding rules of procedure and is without precedent. There is therefore no technical reason why Vanuatu cannot be the first country to benefit from any newly created set of 'simplified and streamlined accession procedures'¹¹⁰ created to implement the 2002 Decision on LDC Accession. This would then allow Vanuatu a fresh opportunity to accede to the WTO on terms that are compatible with its level of development.

The case of Tonga

The vulnerabilities of many Small Island Developing States are not significantly different to those of LDCs. Tonga is a case in point. It is currently the only applicant for accession that is a Small Island Developing State but not an LDC.¹¹¹ The small size of the economy, a dependence on tariffs and the frequency of natural disasters mean that Tonga is in a very similar situation to its LDC neighbour, Samoa. Both Pacific Island nations are currently undergoing accession negotiations. The accession demands on both countries are far too harsh for such small, vulnerable economies. It is recommended that Tonga should be given the benefit of the processes recommended in this paper for LDCs.

Summary of recommendations

A new, objective process is needed for determining the appropriate level of commitments for each LDC applicant. Such a system would address the major difficulties created by the power imbalance inherent in the current system and should include the following features:

- The WTO Secretariat should provide resources to help in the implementation of the Decision on the Accession of Least-Developed Countries, and should also provide the services of impartial experts.
- The WTO should develop a fair and objective system that will enable LDC accession packages to reflect the development needs of the acceding country, rather than the demands of working-party members.
- In order to ensure that such a system is actually implemented, far greater transparency is required and influential Working Party members should take on their share of responsibility for ensuring a fair outcome from negotiations.

- There should be full recognition that LDCs are entitled to the full benefit of all Special and Differential Treatment, all extended implementation periods and all exemptions enjoyed by founding member LDCs.
- LDCs that are in the process of acceding should be allowed to take full advantage of the new process, if necessary by retracting any LDC-plus concessions already made in bi-lateral or multi-lateral negotiations.

Notes

¹ The United Nations definition of an LDC is a country with low income per capita, weakly developed human resources, and a high level of economic vulnerability. See www.un.org/special-rep/ohrrls/ldc/ldc%20criteria.htm (last checked by the author October 2005).

² WT/L/508. The full text of this declaration is available from the WTO.

³ According to the WTO, WTO Agreements contain provisions which give developing countries special rights. These are called 'special and differential treatment' provisions. See www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm (last checked by the author October 2005)

⁴ When a country applies for accession to the WTO, a 'Working Party' is formed, comprised of any WTO member countries who wish to participate. This working party negotiates with the applicant (both as a group and in separate, bi-lateral discussions). As negotiations proceed, the working party may produce one or more iterations of a report, eventually producing a final report known as the 'working party report', which has been agreed by all parties, including the acceding member. The terms of the report are then ratified by the WTO as a whole. Vanuatu's Working Party report is referred to as 'draft', because in the end it was not acceptable to Vanuatu.

⁵ This principle arises out of what is known as the 'Single Undertaking', whereby none of the agreements reached in a negotiating round take effect until there is a concluded agreement on the whole round.

⁶ The members of the Working Party are: Australia, Canada, the European Union (EU), India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, New Zealand, Papua New Guinea, the Philippines, Singapore, Switzerland and the USA.

⁷ Bhutan, Cape Verde, Ethiopia, Laos, Samoa, Sudan, and Yemen.

⁸ There are 11 broad categories of sectors included within the GATS agreement. See www.wto.org/english/tratop_e/serv_e/serv_e.htm (last checked by the author October 2005).

⁹ The TRIPS agreement covers all forms of intellectual property. See www.wto.org/english/tratop_e/trips_e/trips_e.htm (last checked by the author October 2005).

¹⁰ Bound tariff rates are an agreement by WTO members that they will not apply tariff rates above this limit.

¹¹ Tariff peaks are the highest bound tariff rates.

¹² The Commonwealth Secretariat ranks Vanuatu as the most vulnerable to natural disasters out of 111 developing countries. Frequent destructive cyclones are a particular concern, as they regularly destroy crops and infrastructure.

¹³ Latest budget figures supplied in an email exchange between the author and Vanuatu government officials in June 2005.

¹⁴ LCD-plus commitments are commitments which are greater than those applying to LDC members of the WTO.

¹⁵ Grynberg and Joy (2001), UNCTAD (2004b), Hayashi (2003), Adhikari and Dahal (2003), Kelsey (undated).

¹⁶ Vanuatu's Exclusive Economic Zone is 710,000 square kilometres. Source: United Nations (2002) p.4.

¹⁷ The Pacific Island Forum came into existence in 1971. Its 16 members include 14 developing Pacific Island countries, plus Australia and New Zealand.

¹⁸ Information from various sources, including author interviews with officials and non-government organisation workers in Port Vila, questionnaires given to Rural Training Centre Managers (who run centres designed to give vocational skills training to villagers, many of whom have had little or no formal education), the government of Vanuatu, Singh (2002), United Nations (2002) and the Asian Development Bank (2003).

¹⁹ As at 2003. Source: World Development Indicators Database <http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=VUT&CCODE=VUT&CNAME=Vanuatu&PTYPE=CP> (last checked by the author October 2005).

²⁰ United Nations (2002) p.(iv).

²¹ Expatriates earn on average 7.5 times as much as the Ni-Vanuatu average. Source: Government of Vanuatu (2001) p.19.

²² Grynberg and Joy, p.27.

²³ The Asian Development Bank plays a similar role in the Asia-Pacific region to that of the World Bank and the International Monetary Fund globally.

²⁴ For an account of pre-CRP conditions, see Gay (2004) and also Grynberg and Joy (2001) pp.25–26.

²⁵ Most of this was spent on the salaries of 40 foreign consultants who were brought in to implement the reforms.

²⁶ The information about the CRP in this paper has been drawn from author interviews in Vanuatu and from Gay (2004), Singh (2002) and Grynberg and Joy (2001).

²⁷ Some public consultation occurred before the CRP started, but calls from women's groups for them to be involved in implementing the reforms and in social impact assessments appear to have been ignored. Source: Singh (2002) para 25.

²⁸ The Asian Development Bank (2003). Unsurprisingly, the interviewees' priorities bear little resemblance to what the reforms supplied.

²⁹ All interviewees in Port Vila were asked about the CRP. Businessmen, public servants, and non-government organisation workers were unified in

their view that the CRP had done more harm than good. See also Singh (2002) for a critical assessment of the effect of the intervention.

³⁰ UNCTAD (2004): annual average investment from 1985 to 1995 was US\$17m. In 1999, this fell to US\$13m and in 2003 stood at US\$19m.

³¹ VAT is much more difficult to collect than import taxes. Compliance rates were initially very low and have only recently started to match the rate for other collections.

³² Singh (2002) para 58. Total lost revenue from asset sales is estimated at 3.5 billion Vatu (approximately US\$31.5m) over an unspecified time period.

³³ Observations made to the author during interviews in Port Vila with Ni-Vanuatu government officials. See also United Nations (2002) p.30.

³⁴ Singh (2002) para 55.

³⁵ Before the reforms, Vanuatu had fewer government employees per capita than most Pacific Island countries (three per hundred, compared with six in Fiji and more than 18 in the Cook Islands).

³⁶ Gay (2004).

³⁷ United Nations (2002), p.(iii). The abrupt way that VAT was introduced in Vanuatu is in sharp contrast to its introduction in New Zealand, Australia, and Fiji, where lengthy education processes took place before introduction.

³⁸ Rural Training Centre surveys and Singh (2002) para 57.

³⁹ Gay (2004).

⁴⁰ A much simpler accession process was available for a brief period (1994–95) and was used by the 30 founding LDC members. They did not have to make any commitments beyond existing commitments under the agreement that preceded the creation of the WTO in 1994.

⁴¹ 51 Small Island Developing States are included in the list used by the United Nations Department of Economic and Social Affairs. See www.un.org/special-rep/ohrlls/sid/list.htm (last checked by the author October 2005).

⁴² Full text available at: www.wto.org/english/docs_e/legal_e/26-gats.doc (last checked by the author October 2005).

⁴³ Adhikari and Dahal (2003), Charveriat and Kirkbride (2003), Grynberg and Joy (2001), Kirkbride (2004).

⁴⁴ WTO-plus commitments refer to commitments beyond those for existing WTO members at a comparable stage of development.

⁴⁵ Grynberg, Ognivtsev and Razzaque (2002).

⁴⁶ These sectors are Business, Communications, Construction, Distribution, Education, Environment, Finance, Health and Social, Tourism and Travel, and Transport. Energy is a further sector likely to be added to GATS in this round given that some members are asking for it to be added, and offers are already being made by a number of members in this sector.

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- ⁴⁷ A full list of New Zealand's commitments, including all conditions, is set out in Kelsey (2003).
- ⁴⁸ As cited in World Development Movement and Friends of the Earth (2003), p.5.
- ⁴⁹ *Ibid* p.8.
- ⁵⁰ Latest budget figures supplied in an email exchange between the author and Vanuatu officials in June 2005.
- ⁵¹ Approximately US\$30m for 1998–2002. Source: Government of Vanuatu (2001), p.37.
- ⁵² United Nations (2002) p.(iv).
- ⁵³ *Ibid* p.43.
- ⁵⁴ *Ibid* p.42.
- ⁵⁵ The exact figures are unknown, but anecdotal evidence from author interviews with government officials and from questionnaire responses from Rural Training Centre managers suggest that this is the case.
- ⁵⁶ The draft offer has been leaked and is available at: www.gatswatch.org/docs/offreq/EUoffer/EU-draftoffer-2.pdf (last checked by the author October 2005).
- ⁵⁷ www.ictsd.org/issarea/stsd/Resources/Docs/USOffer.pdf (last checked by the author October 2005).
- ⁵⁸ National treatment means treating foreign companies at least as favourably as domestic companies. An exploration of the varied and complex implications of the term 'full national treatment' is beyond the scope of this paper. For a brief discussion of the subject, see Sinclair (2001).
- ⁵⁹ For a fuller discussion of the implications of this, see Ellis-Jones and Hardstaff (2002), pp.18–19.
- ⁶⁰ GATS article VI. Summary of text available at: www.wto.org/english/thewto_e/whatis_e/eol/e/wto06/wto6_18.htm (last checked by the author October 2005).
- ⁶¹ The WTO include a Dispute Settlement Mechanism that decides on cases brought by WTO members over any alleged breach of WTO agreements. This process is extremely difficult and costly for developing countries, particularly LDCs like Vanuatu, to use or defend. See www.wto.org/english/tratop_e/dispu_e/dispu_e.htm (last checked by the author October 2005).
- ⁶² Government of Vanuatu (2001), p.41.
- ⁶³ Survey answers of Rural Training Centre managers and the ADB.
- ⁶⁴ Castalia Strategic Advisors and Network Strategies (2005) p.63.
- ⁶⁵ *Ibid* p.61.
- ⁶⁶ *Ibid* p.59.
- ⁶⁷ *Ibid* p.60.

⁶⁸ Cross-subsidisation is a strategy whereby profitable segments of the market subsidise less profitable segments, in this case the rural phone service.

⁶⁹ *Ibid* p.62.

⁷⁰ *Ibid* p.86.

⁷¹ WT/ACC/VUT/13/Add.2. The full text of this declaration is available from the WTO.

⁷² Details of the case can be found at: www.polarisinstitute.org/polaris_project/public_service/news/july_2004.html (last checked by the author October 2005).

⁷³ See www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm (last checked by the author October 2005).

⁷⁴ A brief summary of the arrangements is available at: www.maf.govt.nz/mafnet/publications/ruralbulletin/mar-2002/march-2002-15.htm (last checked by the author October 2005).

⁷⁵ The material in this box is drawn from Joy and Hardstaff (2003), pp.13–14.

⁷⁶ United Nations (2002) p.36.

⁷⁷ Author interviews with government officials.

⁷⁸ For a discussion of this, see World Development Movement (2005).

⁷⁹ For an account of this, see Greenhill and Wekiya (2004) and the two following articles from May 2005:

www.guardian.co.uk/hearfrica05/story/0,15756,1491629,00.html (last checked by the author October 2005).

www.guardian.co.uk/hearfrica05/story/0,15756,1491600,00.html (last checked by the author October 2005).

⁸⁰ These are served by monopolies largely under foreign control. They are under-regulated and tend to be problematic in several ways, including poor coverage and high prices.

⁸¹ Apart from WTO accession, Vanuatu faces negotiations with the EU on the Pacific Regional Partnership agreement and with Australia, New Zealand, and a number of Pacific Island countries on a regional agreement known as PACER. It is also party to two other regional agreements that are subject to further negotiation: the Melanesia Spearhead Agreement and the Pacific Island Country Trade Agreement.

⁸² Birdsall, Rodrick, and Subramanian (2005).

⁸³ This assumption could be rebutted by the availability of a fund that is genuinely additional to development partner countries' usual aid budgets.

⁸⁴ For a discussion of the health implications of TRIPS, see Mayne and Bailey (2002).

⁸⁵ The Working Party Report, para 108 reads 'Vanuatu would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural

chemical products which utilize new chemical entities, by providing that no person other than the person that submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Vanuatu granted marketing approval to the person that produced the data.'

⁸⁶ United Nations (2002) p.36.

⁸⁷ *Ibid.* HIV/AIDS is already a serious concern in nearby Papua New Guinea, where infection rates may be as high as two per cent, and which has been described as a new frontline in the fight against the disease:

www.theage.com.au/news/Breaking-News/PNG-a-frontline-for-AIDS-UNAIDS/2005/02/17/1108609340794.html?oneclick=true

⁸⁸ United Nations (2002) p.36.

⁸⁹ Latest budget figures supplied in an email exchange between the author and Vanuatu government officials in June 2005.

⁹⁰ Grynberg and Joy (2001), p.27.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Grynberg and Joy (2001), pp.33–35.

⁹⁴ Cyclones (such as Ivy, a category three cyclone which devastated areas across the archipelago in February 2004) regularly strike Vanuatu, and the severity of cyclones, seems to be increasing, possibly as a result of climate change. For a recent scientific analysis of the increase in tropical cyclone severity, see MIT climatologist Kerry Emanuel's recent paper in Nature: <ftp://texmex.mit.edu/pub/emanuel/PAPERS/NATURE03906.pdf> (last checked by the author October 2005).

⁹⁵ Figures for Vanuatu from Grynberg and Joy (2001), pp.35–36. Other figures from World Trade Report (2003), Appendix Table IIB.2: www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report_2003_e.pdf (last checked by the author October 2005).

⁹⁶ Radio interview on 10 June 2005 with Tongan Finance Minister Sosiua 'Utoikamanu: www.abc.net.au/ra/pacbeat/stories/s1389387.htm (last checked by the author October 2005).

⁹⁷ Author interviews with government officials.

⁹⁸ The Trade Department's budget is approximately US\$150,000, according to latest budget figures supplied in an email exchange between the author and Vanuatu government officials in June 2005.

⁹⁹ Finger and Schuler (1999).

¹⁰⁰ *Ibid.*

¹⁰¹ See note 60.

¹⁰² The members of the working party are: Australia, Canada, the European Union, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, New

Zealand, Papua New Guinea, the Philippines, Singapore, Switzerland and the USA.

¹⁰³ The combined total of development grants made to Vanuatu by France, the UK, and the European Union was approximately US\$11.3m in 1999. Source: Government of Vanuatu (2001) p.13.

¹⁰⁴ Full text available at: www.g8.utoronto.ca/finance/fm050611_dev.htm (last checked by the author October 2005).

¹⁰⁵ New Zealand's official aid agency (NZAID) published the new policy in 2003, in a booklet entitled 'Harnessing International Trade for Development', www.nzaid.govt.nz/library/docs/nzaid-harnessing-international-trade-a.pdf (last checked by the author October 2005).

¹⁰⁶ WT/L/508. Full text available from the WTO.

¹⁰⁷ Stuart and Fanjul (2005).

¹⁰⁸ Bhutan, Cape Verde, Ethiopia, Laos, Samoa, Sudan, and Yemen.

¹⁰⁹ This principle arises out of what is known as the 'Single Undertaking', whereby none of the agreements reached in a negotiating round take effect until there is a concluded agreement on the whole round.

¹¹⁰ See www.wto.org/english/thewto_e/acc_e/dda_accessions_e.htm (last checked by the author October 2005).

¹¹¹ The particular vulnerabilities of Small Island Developing States are described in 'Measuring and managing the economic vulnerability of small island developing states'. Available at: www.sidsnet.org/docshare/other/Jamaica_rt_Economic_Vulnerability-Paper.doc (last checked by the author October 2005).

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In-country research

Extensive interviews were conducted by the author in Vanuatu with government officials, non-government organisations, and representatives of indigenous business interests.

Staff at the WTO and UNCTAD with expertise in accessions were interviewed in Geneva. Telephone interviews were also conducted with various relevant individuals, including country technical advisers.

Informal questionnaires relating to issues such as the services needed in rural areas were given to 30 managers of rural training centres (whose role in rural Vanuatu is to train villagers, many of whom have had no formal schooling, in vocational skills) during a field visit by Oxfam programme staff in 2004.

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